



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [REDACTED] Office: Texas Service Center

Date:

JAN 12 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status Pursuant to Section
244 of the Immigration and Nationality Act, 8 U.S.C. 1254a

IN BEHALF OF APPLICANT: Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

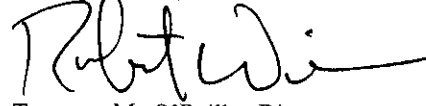
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


For Terrance M. O'Reilly, Director
Administrative Appeals Office

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DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The district director denied the application for Temporary Protected Status (TPS) under § 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, because the applicant failed to establish he had been continuously physically present in the United States since December 30, 1998.

On appeal, the applicant submitted evidence that he was admitted to the United States on July 5, 1998, and left the United States on January 2, 1999. The applicant argues that a brief absence from January 2, 1999 to January 10, 1999 does not result in his failure to maintain continuous physical presence in the United States.

The record reflects that the applicant was born in Nicaragua on September 26, 1969. The record contains a copy of a Nicaraguan passport issued to the applicant which identifies him as a Nicaraguan and is valid from December 9, 1991 to December 8, 1996.

The record also contains a copy of a Venezuelan passport issued to the applicant which identifies him as a Venezuelan and is valid from September 23, 1993 to September 23, 1998. The applicant had the validity of his passport renewed until September 23, 2003 in Venezuela. The applicant was issued an indefinite nonimmigrant visitor's visa in Caracas, Venezuela, on November 17, 1993 and was placed in his Venezuelan passport. The record reflects that he was admitted to the United States on December 11, 1993, July 5, 1998 and on January 10, 1999 using the Venezuelan passport as a citizen of Venezuela.

Section 244(b) of the Act, and the related regulations in 8 C.F.R. 244, do not provide eligibility for temporary protected status to an applicant who is a national of Venezuela.

Further, the term continuously physically present, as used in 8 C.F.R. 244.1, means actual physical presence in the United States since December 30, 1998. Any departure, not authorized by the Service, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence. Even if the applicant qualified as a citizen of Nicaragua, his departure from January 2, 1999 to January 10, 1999 broke his continuous physical presence in the United States.

The applicant departed the United States but did not obtain permission to travel abroad pursuant to the Service's advance parole provisions as stated in 8 C.F.R. 244.15. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of § 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.